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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/815,089

03/31/2004

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7339

23632 7590 03/14/2008  
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EXAMINER

ABU ALI, SHUANGYI

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

03/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/815,089	<b>Applicant(s)</b> MATUSZ ET AL.	
	<b>Examiner</b> SHUANGYI ABU ALI	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-23 and 46-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-23 and 46-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

(1)

### ***Status of Claims***

Claims 16-23 and 46-51 remain for examination.

(2)

### ***Claim Rejections - 35 USC § 103***

Claims 16-23 and 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 5,504,053 to Chou et al. as generally set forth in the first office action mailed on 19/17/2007 stands.

The text of those sections of title 35 US Code not included in this action can be found in the prior Office Action.

(3)

### ***Response to Arguments***

Applicant's arguments filed 12/17/2007 have been fully considered but they are not persuasive. Therefore, the grounds of rejection for claims 16-23 and 46-51 as indicated in the previous Office Action stand.

Applicants argue that the instant catalyst composition having unexpected result. The applicants compare example 2 with examples 3-5 to show the unexpected result. The Examiner respectfully submits that 1) for the argument of the support surface area, all the example having a surface area of 750 m<sup>2</sup>/kg, there is no comparison to show the unexpected result. 2) as for the potassium content in the catalyst, Chou et al. disclose of using potassium in the catalyst (Chou et al., column 14, lines 8-14, column 8, lines 24-

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27, column 5, column 9, lines 1-44, and column 5, lines 23-34). "A reference can be used for all it realistically teaches and is not limited to the disclosure in its preferred embodiments" See *In re Van Marter*, 144 USPQ 421.3) as for the claimed Qk as applicants set forth in the instant application, example 2 contain no potassium to show the unexpected result. Applicants use only one example disclosed by the applicants, which contains no potassium and the support surface is in the range of the instant application, to define the unexpected result. Although not in total agreement, the evidence is not persuasive. Evidence of unexpected results must be commensurate in scope with the subject matter claimed. *In re Linder* 173 USPQ 356. To establish unexpected results over a claimed range, applicants should compare a sufficient number of tests both inside and outside (i.e. as well as the upper and lower limits) the claimed range to show the criticality of the claimed range. *In re Hill* 284 F.2d 955, 128 USPQ 197 (CCPA 1960).

Applicant argue that Chou et al disclose of using either potassium or rubidium for redox pair catalyst, not in combination, the Examiner respectfully submits that first Chou et al. disclose a process for preparing a catalyst composition comprising, selecting a support having a surface area of  $0.03 \text{ m}^2/\text{g}$  ( $30 \text{ m}^2/\text{kg}$ ) to about  $10 \text{ m}^2/\text{g}$  ( $10 \times 10^3 \text{ m}^2/\text{kg}$ ), and depositing on the support: silver metal, a metal or component comprising rhenium, tungsten, molybdenum, or a nitrate- or nitrite-forming compound, and a component containing a Group 1A metal having an atomic number of at least 5 to 83, and in addition potassium. (Chou et al., column 14, lines 8-14, column 8, lines 24-27, column 5, column 9, lines 1-44, and column 5, lines 23-34). And second "It is prima

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facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.” In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980) (citations omitted). Please see MPEP 2144.06

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHUANGYI ABU ALI whose telephone number is (571)272-6453. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sa

**/Jerry A Lorengo/**

**Supervisory Patent Examiner, Art Unit 1793**